

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT, PLACER COUNTY
OFFICE OF EDUCATION AND PLACER
COUNTY CHILDREN'S SYSTEM OF
CARE

OAH CASE NO. 2010110717

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010091063

ORDER DENYING PCCSOC'S MOTION
TO DISMISS

On November 19, 2010, Parents on behalf of Student (Student) filed a Request for Due Process Hearing, naming Dry Creek Joint Elementary School District (Dry Creek), Placer County Office of Education (PCOE), and Placer County Children System of Care (PCCSOC) as respondents. On December 10, 2010, Student filed an amended complaint (complaint) naming the same respondents. In his complaint, Student alleges violations of the Individuals with Disabilities Education Act (IDEA) for school years 2005-2006 to 2010-2011.

On December 23, 2010, Dry Creek filed a Motion to Dismiss, alleging that part of Student's claims against it in issues one, two, three, and seven are barred by the applicable Statue of Limitations. (Ed. Code, § 56505, subd. (1).) Student did not file an opposition to the motion. On December 29, 2010, OAH, by ALJ Robert Helfand, issued an order granting Dry Creek's motion to dismiss all claims against Dry Creek arising prior to November 19, 2008. On December 31, 2010, Student filed a motion for reconsideration. Dry Creek filed an opposition to the reconsideration motion the same day. On January 3, 2011, Student filed his reply to the opposition. On January 7, 2011, ALJ Helfand granted Student's motion for reconsideration. Also on January 7, 2011, OAH, by ALJ Helfand, issued an amended order granting Dry Creek's motion.

On December 28, 2010, PCOE filed a similar motion to dismiss. Student filed his opposition on December 30, 2010 and a reply was filed on January 3, 2011. On January 7, 2011, OAH, by ALJ Susan Ruff, issued an order granting PCOE's motion.

On January 10, 2011, PCCSOC filed a motion to dismiss all issues relating to it, Issues 1, 2, 3, and 6, on grounds that the issues are barred by the two year statute of limitations. On January 14, 2011, Student filed an opposition to the motion on grounds that parents were not aware of the facts because PCCSOC failed to provide information to Parents that restraints and/or containment was utilized on Student because of these behaviors. PCCSOC filed a reply to the opposition also on January 14, 2011.

APPLICABLE LAW

Congress intended to obtain timely and appropriate education for special needs children. Congress did not intend to authorize the filing of claims under the IDEA many years after the alleged wrongdoing occurred. (*Student v. Los Angeles Unified School District et al* (2010) O.A.H. case 2010010284, 110 LRP 3448; *Student v. Saddleback Unified School District* (2007) O.A.H. case 2007090371, 108 LRP 45940; *Student v. Vacaville Unified Sch. District* (2004) S.E.H.O case SN 04-1026, 43 IDELR 210, 105 LRP 2671, quoting *Alexopulous v. San Francisco Unified Sch. District* (9th Cir. 1987) 817 F.2d 551, 555.) California implements the Individuals with Disabilities Education Act (IDEA) through its special education laws. (*Miller v. San Mateo-Foster City Unified Sch. District* (N.D. Cal. 2004) 318 F.Supp.2d 851, 860.) Education Code section 56505, subd. (l) provides that any request for a due process hearing shall be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (See also, *Draper v. Atlanta Ind. Sch. System* (11th Cir. 2008) 518 F.3d 1275, 1288, 20 U.S.C. §1415(f)(3)(c).) The two year limitations period does not apply if the parent was prevented from filing a due process request due to either (1) specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request, or (2) the local educational agency withheld information from the parent which is required to be provided to the parent. (See also, *J.L. v. Ambridge Area Sch. District* (W.D. Pa. February 22, 2008) 2008 U.S. Dist. LEXIS 13451, *23-24.)

“[A] cause of action accrues, and the statute of limitations begins to run, when a plaintiff knows or has reason to know of the injury which is the basis of his action.” (*Miller*, supra, 318 F.Supp.2d at 861(quoting *Alexopulous*, supra, 817 F.2d at 554).)

The “‘knowledge of facts’ requirement does not demand that the [party] know the specific legal theory or even the specific facts of the relevant claim; rather the [party] must have known or reasonably should have known the facts underlying the supposed learning disability and their IDEA rights.” (*Miller*, supra, 318 F.Supp.2d at

861 (citing *Jolly v. Eli Lilly & Co.* (1988) 44Cal.3d 1103, 1111); *Ashlee R. v. Oakland Unified Sch. District Financing Corp.* (N.D. Cal. 2004) 2004 U.S. Dist. LEXIS 17039, p. 16.)

The narrow exceptions of misrepresentation and withholding of information require that the local education agency's actions be intentional or flagrant rather than merely a repetition of an aspect of determining whether a student received a free appropriate public education (FAPE). "The statutory requirement that the misrepresentation or withholding prevented (the parent) from requesting the hearing further evidences the stringency, or narrowness, of these exceptional circumstances." (*School District of Philadelphia* (Pa. State Educational Agency, Appellate Panel, March 5, 2008) 49 IDELR 240, p. 5, 108 LRP 13930.)

DISCUSSION

Student contends that PCCSOC failed to provide information which it was obligated to provide-whenver containment measures were utilized to control Student's behavior. Student contends that PCCSOC informed them that Student had a "tough day," bad day," or "rough day," but it did not inform Parents when emergency interventions was used. PCCSOC contends that Parents were aware that emergency interventions may be used when parents signed a Therapeutic Containment form. PCCSOC also contends that any alleged misrepresentation did not prevent Parents from filing a due process request; it never told Parents that Student's problems were solved, and its actions were not intentional or flagrant.

Title 5 of the California Code of Regulations, section 3052, subdivision (j)(5) states: "To prevent emergency interventions¹ from being used in lieu of planned, systematic behavioral interventions, the parent and residential provider, if appropriate, shall be notified within one school day whenever an emergency intervention is used or serious property damage occurs." Thus, PCCSOC had a legal obligation to inform Parents whenever containment measures were utilized by its staff on Student. This obligation is not satisfied by merely telling Parents that their child had a "tough day." PCCSOC's actions are "flagrant" as it failed to comply with section 3052, subdivision (j)(5). The requirement to inform parents whenever emergency interventions are used is to permit parents to act as a check on agencies which turn to such measures as a substitute for a systematic behavioral intervention plan.

If parents are not aware of the extent that containment and other emergency interventions are being used on their child, they may be unaware of the basis of the

¹ Emergency interventions are to be used to control unpredictable, spontaneous behavior which poses clear and present danger of serious physical harm to the individual or others and which cannot be immediately prevented by a response less restrictive than the temporary application of a technique used to control the behavior. (5 C.C.R., § 3052(j).)

factual basis of any denial of their child's rights to a free appropriate public education. Here, Student makes such an allegation. Here, Student has demonstrated that he should be given an opportunity to present evidence that the two year statute of limitations should be tolled. Accordingly, PCCSOC's motion to dismiss is DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: January 24, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings